

Human Services Board, Trinkia Kerr, Donelle Staley, and Joan Bauer

Daniel Jerman, Hearing Officer

April 26, 1996

Fair Hearing No. 14,291

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare reducing his ANFC benefits by removing the petitioner's needs from the family's grant for a period of six months. The issue is whether the petitioner failed to participate in the Reach Up program as set forth in the pertinent regulations.

PROPOSED FINDINGS OF FACT

The petitioner is a long-standing recipient of ANFC. He has been sanctioned at least twice before for failing to participate in Reach Up. His last sanction period ended in February, 1995. In January, 1996, the petitioner's DSW caseworker notified the petitioner and the Department's Reach Up offices that the petitioner, as an unemployed "Group 3" participant in the ANFC program, was required to register for

the Reach Up Community Service Employment (CSE) program. The first requirement of participation in the CSE program is to participate in and complete an eight-week job search.⁽¹⁾

On January 19, 1996, the petitioner's Reach Up case manager sent the petitioner a form notice setting forth the work search requirement and scheduling a meeting for the petitioner with Reach Up on January 26, 1996. The notice included the following conspicuously-placed note:

Failure without good cause to appear for a scheduled assessment meeting after two written requests to do so shall result in conciliation. If a conciliation process is not successfully resolved, sanction(s) to ANFC may be applied.

The petitioner did not appear at the scheduled meeting and did not call Reach Up to explain his absence. The case manager then sent the petitioner a "second notice", dated January 31, 1996, scheduling another meeting on February 8, 1996. This notice also included the above warning regarding noncompliance.

The petitioner did not appear at the February 8th meeting and did not call or notify Reach Up. The case manager then sent the petitioner a "Reach Up Conciliation Letter", dated February 13, 1996, setting up a conciliation meeting on February 21, 1996.

The petitioner did not appear at the conciliation meeting and did not notify Reach Up. The case manager then, on February 23, 1996, sent the petitioner another conciliation letter--this time by certified mail--setting another conciliation meeting for March 6, 1996. Both conciliation letters contained warnings that the petitioner's failure to comply with Reach Up could result in the reduction of his ANFC grant. The Department's records show that a person in the petitioner's household signed for the certified letter on February 24, 1996.

The petitioner did not appear at the March 6 meeting and did not notify Reach Up. On March 7, 1996, the petitioner's Reach Up case manager notified the petitioner's ANFC worker that the petitioner had failed to participate in Reach Up, and since this was his third such incident of non-compliance, the petitioner should be sanctioned for a period of six months.

On March 12, 1996, the Department sent the petitioner a notice reducing his ANFC benefits by removing the petitioner's needs from the family's ANFC grant because of the petitioner's failure to participate in Reach Up.

At the fair hearing in this matter, held on April 17, 1996, the petitioner testified that he had not received any of the letters except the certified letter, and that he had misread that letter and believed that his meeting was scheduled at a later time.⁽²⁾ The petitioner admitted, however, that he received other mail during this time, including several ANFC checks. He stated that his children had not received birthday cards from their grandmother, but that most other mail had apparently been delivered. The petitioner lives in an apartment complex and receives his mail in a locked box. The petitioner admitted that, to his knowledge, nobody else has the key to the box. None of the letters in question was returned to the Department and all had the petitioner's correct mailing address.

Based on the evidence and the petitioner's demeanor, the petitioner's testimony that he did not receive any of the letters sent by regular mail, and that he "misread" the certified letter, is utterly lacking in credibility. It is found that the petitioner received, and simply chose to ignore, all of the letters.

RECOMMENDATION

The Department's decision should be modified. As a "Group 3" parent who was in CSE status, the applicable sanction for the petitioner should be that his family be placed on vendor payment status, rather than the petitioner's needs being removed from the ANFC grant.

REASONS

The regulations governing the Reach Up conciliation process include the following:

A condition of receiving ANFC benefits as an "unemployed parent" is that the designated parent who is unemployed must be "cooperating with Reach Up participation requirements". W.A.M. § 2333.1(7). The regulations also provide that "failure without good cause to appear for two scheduled conciliation conferences results in automatic imposition of the applicable sanction". W.A.M. § 2350 (emphasis added). There is no question that the petitioner in this case failed to appear at at least two such meetings. (3)

However, it appears that the Department has applied to wrong sanction to the petitioner's case. As a "Group 3" parent who was subject to the CSE program (i.e., had been receiving ANFC for at least 13 months), it appears that the petitioner was subject to the sanctions specified in § 2351.2, supra, rather than § 2351.1 (supra). The applicable sanction under § 2351.2 is placing the family on vendor payment status and requiring the petitioner to file monthly reports of his circumstances--not removing the petitioner's needs from the family's ANFC grant as specified in § 2351.1.

As noted above, based on the petitioner's testimony and behavior it can only be concluded that he knowingly refused to participate as required in the Reach Up conciliation process and in the Reach Up CSE program in general. It must also be concluded that the conditions specified in § 2351.2(1)(a) (supra) include cases in which an individual, like the petitioner in this matter, refuses to participate in a preliminary requirement of the CSE program. The petitioner's refusal to participate in the CSE work search must be considered tantamount to a refusal to "accept an unsubsidized job or community service employment". *Id.* Otherwise, an individual could escape any sanction by refusing to participate in the program before he is actually offered a job. Such an irrational result is clearly not contemplated by the regulations.

The Department's decision should be modified accordingly. (4)

THIS MATTER WILL BE CONSIDERED BY THE BOARD AT A MEETING IN MONTPELIER ON WEDNESDAY, MAY 8, 1996. THE MEETING WILL BE HELD AT THE NATIONAL LIFE INSURANCE COMPANY - NORTH BUILDING (SEE ATTACHED MAP), IN THE TRANSPORTATION/MAINTENANCE CONFERENCE ROOM, 4TH FLOOR, AND WILL BEGIN AT 9:30 A.M., ALL VISITORS ARE REQUIRED TO SIGN IN AT THE FRONT DESK AS THEY COME INTO THE BUILDING. DIRECTIONS TO THE CONFERENCE ROOM WILL BE PROVIDED BY THE RECEPTIONIST AT THE FRONT DESK.

1. Under the Welfare Restructuring Project, "Group 3" parents who have been receiving ANFC for at least 14 months are subject to this requirement. See W.A.M. §§ 2346.8 and 2346.9.

2. The letter did contain another (later) date setting the time limit that the conciliation process would have to be completed by. The petitioner stated that he thought that was the date of his meeting.
3. The "Good Cause Criteria" for failure to participate in Reach Up are contained in W.A.M. § 2349.1. None of the criteria listed in that section appears to apply to the petitioner's situation herein--and the petitioner does not allege otherwise.
4. The petitioner's attention is called to the fact that under the regulations he can end his sanction by returning to Reach Up, completing his work search, and accepting either unsubsidized or subsidized employment. See § 2351.2(4).